

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

WRIT PETITION NO.35839 of 2015

O R D E R

(per Hon'ble Sri Justice M. Seetharama Murti)

Challenge in this writ petition is to the order of detention, dated 05.10.2015, in Proc.No.SpL/Ngkl/2015-PD(1) of the Collector and District Magistrate, Mahaboobnagar District.

By the said order, the detenu, Kethavath Badhya, son of Kethavath Sakru, was subjected to preventive detention under Section 3 (1) & (2) read with Section 2 (a) & (b) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

The son of the detenu filed this writ petition seeking a writ of habeas corpus to produce the detenu before this Court by declaring the detention as illegal and unconstitutional. A consequential direction was sought for release of the detenu forthwith from Central Prison, Cherlappally, where he is lodged.

The foremost contention of the petitioner is that though the Government is required to pass an order confirming the detention, the detenu is not served with any such order passed by the Government confirming the detention order. In response to the said contention the Government produced in the first instance a G.O., which has no relevance. However, a copy of G.O.Rt.No.3373, General Administration (Law & Order) Department, dated 19.12.2015, is produced thereafter. Under the said G.O., the Government confirmed the detention of the detenu for a period of 12 (twelve) months from the date of his detention, 06.10.2015. The learned Government Pleader contended that a copy of the said G.O was duly served on the detenu. The said contention was disputed by the petitioner. Perusal of the copy of the said G.O produced before this Court at the time of hearing would disclose that the signature said to be of the detenu on the copy of the said G.O clearly

appears to be not that of the detenu, when examined with his admitted signatures on the other documents which are a part of the record produced by the learned Government Pleader before this Court. Non-service of the G.O on the detenu by the State undoubtedly violates the constitutional right of the detenu to know the result upon his making a representation against his detention. On this short ground alone the writ petition deserves to be allowed. Be that as it may.

Though various other grounds are also urged on behalf of the detenu, the main grounds on which the detention of the petitioner's father is challenged are as under: "All the materials relied upon by the detaining authority, including copies of the bail orders, were not made available within the statutory time of five days; the detenu is uneducated; his mother tongue is Telugu; he could not read or write English; and, he understands only Telugu language and communicates in the said language.'

It is also contended in the additional affidavit that though it is stated in the counter-affidavit of the Collector and District Magistrate that 'in all the cases, the detenu was arrested and has been released on bail as per bailable provisions under law and thereby the department is unable to prevent him from further indulging in dangerous activities', the said allegation is false as the detenu was never arrested in any of the cases mentioned in the detention order and he was neither produced before any Court nor was released on bail. It is also stated in the additional affidavit that in-fact, the detenu came to know about his implication in the said cases only after service of the grounds of detention.

Sri L. Ravi Chander, learned Senior Counsel representing Sri Satish Kumar Varma, learned counsel for the petitioner, would contend that as the detenu was neither provided with translations of all the material documents relied upon nor was he explained the contents thereof and as many of the documents supplied are not even legible, the detenu was denied the constitutional right of effectively making a representation against his detention and that this failure on the part of the State would vitiate the entire proceedings.

Insofar as this vital aspect is concerned, the Collector and District Magistrate, Mahaboobnagar, in his counter-affidavit stated that a copy of the proceedings dated 05.10.2005 of the Collector, Mahaboobnagar, along with supporting documents, were given to the detenu in the presence of the Jailor at Central Prison, Cherlapally, on 06.10.2015.

However, no document, like a Receipt, obtained from the detenu evidencing such serving of the copies of the said documents on him, was produced before this Court. In-fact, a copy of the document viz., 'intimation to the Family Members regarding detention of Sri K. Badiya Naik, S/o.K. Sakru, R/o.Vatipally Thanda under P.D.Act' said to have been served on the wife of the detenu was filed. In the said receipt, it is stated that the detenu was detained on 06.10.2015 and admitted into Central Prison, Cherlapally by duly serving and explaining the detention order and grounds for detention in Telugu (mother tongue) to the detenu in the presence of the Jailor, Central Prison, Cherlapally.

The afore-stated copy of intimation given to the family members of the detenu would indicate that the detenu was duly served with the detention order and grounds of detention in Telugu and that the contents thereof were explained to him in Telugu language. But, the said intimation does not evidence the fact that the documents relied upon by the detaining authority were served on the detenu. Further, the documents that were relied upon by the detaining authority for arriving at subjective satisfaction and which were said to have been served on the detenu, running into several pages, contain documents both in English and Telugu languages and so far as the documents in English are concerned, admittedly no translations in Telugu were supplied to the detenu. Further, perusal of the material on record discloses that the following documents said to have been supplied to the detenu are not legible: (1) Crime and occurrence report dated 08.10.2013; (2) Crime and occurrence report dated 19.12.2014; (3) Panchanama dated 19.12.2014; (4) Panchanama dated 25.02.2015; (5) Crime and occurrence report dated 15.09.2015; and (6) Panchanama dated 18.09.2015.

Therefore, the material on record makes it clear that the order of detention and the grounds of detention alone were served and explained to the detenu in Telugu but the documents relied upon by the detaining authority, some of which are in English, were neither translated nor were the contents thereof explained to the detenu in the language he knows and understands. Further, as already noted, some of the documents, which were duly furnished, were not legible. Admittedly copies of the bail orders, if any, were also not furnished to the detenu.

Given the above facts, the issue for consideration presently is whether the State fulfilled the requirements prescribed under Article 22 of the Constitution while adhering to the above procedure. Article 22 of the Constitution provides for protection against arrest and detention in certain cases. Clauses (4) and (5) of Article 22, dealing with preventive detention, read thus:

22.

(1)

(2)

(3)

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order

(6)

(7)

The Constitution therefore vests a person subjected to preventive detention with the right of making a representation against the order of detention. To facilitate the exercise of this constitutional right, the detaining authority is required to communicate to the detenu, the grounds on which the order has been made and also the documents relied upon while arriving at the subjective satisfaction so as to afford him the earliest opportunity of making such a representation.

In **Vasanthu Sumalatha vs. State of Andhra Pradesh and others**^[1],
a Division Bench of this Court, having made copious reference to precedents,
held as follows:

To enable the detenu to exercise his right to make an effective representation against his detention, it is imperative that all relevant material, including copies of the bail orders, are furnished to him. The contention that the detenu was aware of the bail order, even if accepted as true, would not justify failure of the detaining authority to furnish these copies to the detenu when he has no access to these documents when he is in preventive custody. Failure to furnish copies of the orders granting bail to the detenu vitiates the order of detention.

In the said decision *supra*, on the aspect of illegible documents supplied to the detenu it was held as follows:

Our attention was drawn to the documents filed by the detaining authorities, along with their counter affidavits, to show that a few of the pages are illegible. On being satisfied that the pages pointed out to us were, indeed, illegible, we asked the learned Advocate General if he could read at least a few lines in these pages. While fairly expressing his inability to read them, Learned Advocate General would, however, contend that all that the law requires is for a gist of these allegations to be made known to the detenu, and the mere fact that a few of the pages are illegible is of no consequence. If copies of the documents, supplied at the request of the detenu, are illegible, the safeguards provided by the Constitution must be held to have not been followed. (*Manjit Singh Grewal v. Union of India* 1990 (Supp) SCC 59). Failure to supply legible copies has affected the right of detenu to submit an effective representation, and has thereby rendered his continued detention illegal.

On the effect of supply of documents in a language unknown to the detenu it was held in the afore-said decision as follows:

The distinction between a document which has been relied upon by the detaining authority in the grounds of detention, and a document which finds a mere reference in the grounds of detention, should be maintained. Non-supply of a copy of the document relied upon in the grounds of detention is fatal to the continued detention, and the detenu need not show that prejudice was caused to him as non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. It would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of the document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language. (*Powanammal vs. State of Tamil*

Nadu and another (1999) 2 SCC 413). As noted hereinabove, the documents furnished to the detenu in Telugu included copies of the confessional statements of the co-accused. These statements were relied upon by the detaining authority in making the order of detention. Failure to supply these documents, in a language known to him, resulted in the detenu being denied the opportunity of making an effective representation, and would render his continued detention illegal.

This Court in W.P.No.4805 of 2016 having referred to the decision in **Vasanthu Sumalatha (supra)** and noted the development of law, recorded the legal principles which are relevant to that case as follows: -

‘Preventive detention is an exception to Article 21 of the Constitution of India and therefore, such an exception can apply only in rare cases. To enable a detenu to exercise his right to make an effective representation against his detention, it is imperative that all relevant material, including copies of the bail orders, are furnished to him. Failure to supply legible copies of documents, on which the detaining authority placed reliance, to the detenu affects his right to submit an effective representation and thereby renders his continued detention illegal. Further, failure to supply documents relied upon by the detaining authority to the detenu in a language which the detenu knows and understands results in the detenu being denied the opportunity of making an effective representation and would render his continued detention illegal. Irrespective of whether or not the detenu could read Telugu, furnishing him all the material documents translated into Telugu is a must to protect his constitutional right of making an effective representation against the order of detention passed against him. It is fairly stated by the learned Government Pleader that the detenu is not subjected to seclusion or isolation and is allowed visits by his family members and friends. If that be so, there is every possibility that if the documents are furnished to him in his known language, Telugu, the detenu would have the assistance and help of his visiting better-educated family members and friends to discuss and formulate his representation effectively against his detention.

The ratio in the decision squarely applies to the facts of the case on hand. It is an admitted fact that the contents of all the material documents which were relied upon by the detaining authority running into several pages were not read over and explained to the detenu in Telugu. As already noted, the undated intimation which was said to have been given to Kethavath Rupli, wife of the detenu, in evidence of the detenu being supplied the material documents does not show that all the material documents were supplied. It only shows that the order of detention and the grounds of detention are supplied. Admittedly, some of the documents furnished to the detenu are not legible. Further, though it is the case of the Government that the detenu was released on bail in all the cases which constituted the

grounds for detention, no bail orders form part of the material documents and were admittedly not supplied to him. Above all, a copy of the G.O.Rt.No.3373, General Administration (Law & Order) Department, dated 19.12.2015, was not furnished to the detenu. Since the detenu was prevented from making an effective representation by virtue of the fact that he was not made aware of all the material that was relied upon by detaining authority in reaching its subjective satisfaction, the order of detention is liable to be set aside.

In view of the admitted and established facts and the legal position obtaining, we are of the considered view that the State cannot seek to support the order of detention in the present case as it failed to comply with the requirement of Article 22(5) of the Constitution of India.

The Writ Petition is accordingly allowed setting aside the impugned detention order, dated 05.10.2015, passed by the Collector and District Magistrate, Mahabubnagar District, and the confirmation thereof by the Government of Telangana *vide* G.O.Rt.No.3373, General Administration (Law & Order) Department, dated 19.12.2015. The detenu, Kethavath Badhya, shall be set free forthwith unless his confinement is required in any other case.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

26.08.2016

Vjl